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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/689,167	10/20/2003	Heinz H. Busta	100077	6389

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EXAMINER

PRENTY, MARK V

ART UNIT	PAPER NUMBER
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2822

DATE MAILED: 08/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/689,167

Applicant(s)

BUSTA, HEINZ H.

Examiner

MARK PRENTY

Art Unit

2822

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 and 10-57 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 11-57 is/are allowed.
- 6) ☒ Claim(s) 1,2,4,5 and 10 is/are rejected.
- 7) ☒ Claim(s) 3 and 6-8 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

This Office Action is in response to the amendment filed on June 6, 2005.

Claims 1, 2, 4, 5 and 10 are rejected under 35 U.S.C. 102(e) as being anticipated by newly cited United States Patent 6,876,482 to DeReus.

With respect to independent claim 1, DeReus discloses a MEM device (see the entire reference, including the Figs. 1-4 disclosure, for example), comprising: a movable micromachined structure 108; and a diamond material 118 disposed along a surface of said micromachined structure (see the sentence bridging columns 9 and 10), said diamond material defining an abrasion resistive contact area (see column 9, line 50, through column 10, line 41).

Claim 1 is thus rejected under 35 U.S.C. 102(e) as being anticipated by DeReus.

With respect to dependent claim 2, DeReus's MEM device operates as a switch (see DeReus's claim 41, for example).

Claim 2 is thus rejected under 35 U.S.C. 102(e) as being anticipated by DeReus.

With respect to dependent claim 4, DeReus's movable micromachined structure 108 comprises a lever mechanism.

Claim 4 is thus rejected under 35 U.S.C. 102(e) as being anticipated by DeReus.

With respect to dependent claim 5, DeReus's movable micromachined structure 108 comprises a ribbed lever mechanism (note layers 114 and 122).

Claim 5 is thus rejected under 35 U.S.C. 102(e) as being anticipated by DeReus.

With respect to dependent claim 10, DeReus's diamond material (i.e., bump 118) is disposed along a surface of said movable micromachined structure wherein said surface is subject to abrasion (see column 9, lines 46-62).

Claim 10 is thus rejected under 35 U.S.C. 102(e) as being anticipated by DeReus.

Claims 3 and 6-8 are objected to as being dependent upon a rejected base claim, but would be allowable over the prior art of record if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 11-57 are allowable over the prior art of record.

The applicants' arguments are essentially moot in view of the new ground of rejection. For the record, however, the applicant's remark (on page 11 of the response) that amended claim 1 corresponds to the Fig. 13(a) disclosure is incorrect. Amended claim 1 corresponds to the Figs. 37-52 disclosure (see the specification at pages 15-16, paragraphs 53-54, for example).

Registered practitioners can telephone the examiner at (571) 272-1843. Any voicemail message left for the examiner must include the name and registration number of the registered practitioner calling, and the Application/Control (Serial) Number. Technology Center 2800's general telephone number is (571) 272-2800.


Mark V. Prenty
Primary Examiner